IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. 109.

MARGARET E. SNYDER, Also Known as PEG SNYDER,
Petitioner,

vs.

CHARLES HARRIS and EARL W. KIRCHHOFF,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Eighth Circuit.

PLAINTIFF'S PETITION FOR REHEARING.

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Comes now Petitioner herein, and respectfully petitions the Court for rehearing of the judgment and decision of the Court entered herein on March 25, 1969, and as grounds for this Petition Petitioner respectfully states that:

The "matter in controversy" in this case is the single wrong done by the Respondents to all the shareholders of Missouri Fidelity Union Trust Life Insurance Company as a class, and the procurement of the sum of $1,200,000 by the Respondents and other directors of the

Company for themselves through such single wrong to the entire class.

The "controlling object" of the suit is to require the Respondent directors to account to the shareholders **as a class** for the $1,200,000 they obtained in breach of their fiduciary duties to the class. This right to such accounting is a single one in which all the shareholders have a common and undivided interest.

True, each individual shareholder cannot be awarded more than his aliquot share of the total damages sustained **by the class** and therefore it is necessary to add together their "separate and distinct" claims to provide the requisite jurisdictional amount. However, it does not follow, at least in the factual circumstances of **this** case, that the "matter in controversy" does not exceed the sum of $10,000. Irrespective of the amount of Petitioner's **share** in the amount for which Respondents are accountable, the "matter in controversy" remains constant at $1,200,000.

Respondents submit that a decisive consideration should be the fact that the **wrong** done to the shareholders is not severable as to the individual members of the class, and that such wrong was done to the class **as a class.** That is to say, the basic "matter" for determination is whether the Respondents wrongfully appropriated to their own use an asset of the value of $1,200,000 in which the shareholders as a class have a common and undivided interest. Then, and then only, would it become necessary to divide this sum among the individual shareholders. And since the interest of Petitioner and the other shareholders collectively exceed the jurisdictional amount, this should suffice.

To permit aggregation of the several amounts which might be awarded out of the total to the individual members of the class is entirely consistent with the concept of

"matter in controversy" as developed by this Court and illustrated by cases such as **Troy Bank v. Whitehead**, 222 U. S. 39, and **Pinel v. Pinel**, 240 U. S. 594. **Troy Bank** stated the rule in this way:

> "When two or more plaintiffs, having separate and distinct demands, **unite for convenience and economy** in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a **single** title or **right**, in which they have **a common and undivided interest**, it is enough if their interests collectively equal the jurisdictional amount." 222 U. S. 39, 40 (Emphasis supplied).

Applying that rule in **Troy Bank**, this Court permitted two noteholders, each of whose "separate and distinct" claims was less than the jurisdictional minimum, to aggregate their claims in a suit whose "**controlling object**" was the enforcement of a vendor's lien which is a "single thing" constituting a "common security" for the payment of both notes.

On the other hand, in **Pinel**, this Court refused to allow aggregation of the claims of two plaintiffs, each of whom sought a child's share in a decedent's estate based on the alleged mistake of the testator to make provision for him in the will, because the claim of each plaintiff was truly and in all respects separate and distinct from that of the other plaintiff. As this Court noted, it was "evident that the testator's failure to provide for one of his children by will, based upon mistake or accident, is independent of the question of whether a like mistake was made with respect to another child" (240 U. S. 594, 596).

Petitioner respectfully submits that whatever principle is desirable and to be applied in cases comparable to **Pinel** when separate and distinct claims involving separate

wrongs to each claimant are sought to be pieced together to make a whole amount for which judgment is prayed, the present case is clearly distinguishable. Here the very starting point, the basic matter in controversy, and the "controlling object" of the suit, involves a single, undivided sum, an **initial whole** amount, resulting from a single wrong. No individual shareholder can recover unless all can do so, not because of several wrongs to each but because of **one** wrong done to all. Hence, under the rationale of **Troy Bank**, aggregation of the undivided claims of the shareholders as a class should be allowed.

Respectfully submitted,

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Certificate.

We, Hyman G. Stein and Charles Alan Seigel, counsel for the above named Petitioner, respectfully state and certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

.....
Hyman G. Stein,

.....
Charles Alan Seigel,
Counsel for Petitioner.